

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 19, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1351

Introduced by Senator Wright

February 19, 2010

~~An act to add Sections 11346.6 and 11346.65 to the Government Code, relating to regulations. An act to add Section 38566 to the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1351, as amended, Wright. ~~State agencies: regulation adoption requirements. California Global Warming Solutions Act of 2006: State Air Resources Board regulations.~~

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions.

This bill would require the state board to make available to the public, at the time that the state board adopts a regulation pursuant to the act, any implementation schedule that is required to initiate compliance with that regulation. The state board would be required to make available to the public on the state board's Internet Web site any reporting form that is required to initiate compliance with a regulation

adopted pursuant to the act at least 45 days prior to the date required for filing that form in accordance with the implementation schedule.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

~~This bill would require an agency, in specified circumstances, that adopts a regulation that requires the use of a new or emerging technology or equipment in order to achieve the identified purpose of the regulation to post, as specified, upon the effective date of the regulation, that the required technology or equipment is commercially available or will be commercially available prior to the effective date of the regulation. This bill would, if the required technology or equipment is not commercially available on the effective date of a regulation, prohibit an agency from enforcing a violation of the regulation until at least 6 months after the technology or equipment becomes commercially available and the agency posts that information, as specified.~~

~~This bill would require an agency to make any implementation schedule, procedure, or form that is necessary for initial compliance with a proposed regulation available to the public upon the agency's final adoption of that regulation. The bill would, if the implementation schedule, procedure, or form necessary for initial compliance with the regulation, as adopted, is not available on the effective date of the adopted regulation, prohibit an agency from enforcing a violation of the adopted regulation for at least 6 months after the implementation schedule, procedure, or form becomes available and the agency posts that information, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 38566 is added to the Health and Safety*
- 2 *Code, to read:*
- 3 *38566. (a) (1) The state board shall make available to the*
- 4 *public, at the time the state board adopts a regulation pursuant*
- 5 *to this division, any implementation schedule that is required to*
- 6 *initiate compliance with the regulation.*
- 7 *(2) If a reporting form is required to initiate compliance with*
- 8 *a regulation adopted pursuant to this division, the state board*

1 *shall make the reporting form available to the public on the state*
2 *board's Internet Web site at least 45 days prior to the date required*
3 *for filing that form in accordance with the implementation*
4 *schedule.*

5 *(b) This section does not excuse compliance from a regulation*
6 *adopted before January 1, 2011, that does not meet the*
7 *requirements of subdivision (a), or require the state board to*
8 *readopt or amend a regulation approved by the state board before*
9 *January 1, 2011.*

10 ~~SECTION 1. The Legislature finds and declares all of the~~
11 ~~following:~~

12 ~~(a) This state has some of the most extensive and detailed~~
13 ~~regulatory requirements in the nation which can also lead to~~
14 ~~significant financial penalties for noncompliance.~~

15 ~~(b) It is in the best interests of the public good and the regulated~~
16 ~~business community that regulations are fully complied with. In~~
17 ~~order to ensure full compliance, regulations should clearly set forth~~
18 ~~adequate notice of clear enforcement timelines, provide all~~
19 ~~necessary forms and other necessary compliance tools well in~~
20 ~~advance for proper planning and implementation, particularly~~
21 ~~during the initial implementation, and ensure that any technologies~~
22 ~~required for compliance are in fact commercially available in~~
23 ~~adequate supply.~~

24 ~~(c) There are numerous examples of regulations affecting the~~
25 ~~state's economy and the public health that did not provide adequate~~
26 ~~notice and compliance tools, which put the regulated business~~
27 ~~communities at risk of noncompliance and thereby reduced its~~
28 ~~ability to properly implement state law.~~

29 ~~(d) It is, therefore, the intent of the Legislature that the~~
30 ~~regulatory bodies of this state, to the maximum extent possible~~
31 ~~and with reasonable advance notice before a regulation goes into~~
32 ~~effect, identify all mandatory deadlines, provide all necessary~~
33 ~~compliance tools, and ensure that required compliance technologies~~
34 ~~are commercially available.~~

35 ~~SEC. 2. Section 11346.6 is added to the Government Code, to~~
36 ~~read:~~

37 ~~11346.6. (a) An agency that adopts a regulation that requires~~
38 ~~the use of a new or emerging technology or other equipment in~~
39 ~~order to achieve the identified purpose of the regulation shall post~~
40 ~~on its Internet Web site, if available, and in the California~~

~~Regulatory Notice Register, upon the effective date of the regulation, that the required technology is commercially available or will be commercially available prior to the effective date of the regulation.~~

~~(b) Notwithstanding any other law, if a new or emerging technology or other equipment, whose use is required by a regulation, is not commercially available on the effective date of the regulation, the adopting agency shall not enforce a violation of that regulation until at least six months after the required technology or other equipment becomes commercially available and the agency posts on its Internet Web site, if available, and in the California Regulatory Notice Register, that the required technology or other equipment has become commercially available.~~

~~(c) Nothing in this section shall be construed to require an agency to readopt a regulation already approved by the office and filed with the Secretary of State.~~

~~(d) An agency shall not be required to comply with the requirements of this section if an adopted regulation that requires the use of a new or emerging technology or other equipment imposes that requirement on the industry that is directly responsible for developing or manufacturing the new or emerging technology or other equipment as a part of that industry's core business.~~

~~(e) Nothing in this section shall be construed to prohibit an agency from adopting new or additional standards for new or emerging technology or other equipment.~~

~~SEC. 3. Section 11346.65 is added to the Government Code, to read:~~

~~11346.65. (a) An agency shall make any implementation schedule, procedure, or form that is necessary for initial compliance with a proposed regulation available to the public upon the agency's final adoption of that regulation.~~

~~(b) Notwithstanding any other law, if an implementation schedule, procedure, or form that is necessary for initial compliance with the regulation, as adopted, is not available to the agency as of the effective date of that adopted regulation, the adopting agency shall not enforce a violation of that adopted regulation until at least six months after the implementation schedule, procedure, or form becomes available and the agency posts on its Internet Web site, if available, and in the California Regulatory Notice Register, that~~

1 the required implementation schedule, procedure, or form has
2 become available.
3 (e) ~~Nothing in this section shall be construed to require an~~
4 ~~agency to readopt a regulation already approved by the office and~~
5 ~~filed with the Secretary of State.~~

O